

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3231 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PUSHPABEN M. THAKKAR

Versus

PRESIDENT

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Appearance:

1. Special Civil Application No. 3231 of 1985  
MR PH PATHAK for Petitioner  
MR JAYESH M PATEL for Respondent No. 1  
MR VM PANCHOLI, AGP, instructed by  
M/S MG DOSHIT & CO for Respondent No. 2

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CORAM : MR.JUSTICE M.S.SHAH  
Date of decision: 29/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has challenged the order dated 6th May 1985 passed by the President of Mahemdavad Nagar Panchayat terminating the petitioner's services on the ground that the petitioner's appointment was not in conformity with the staff set up sanctioned by the

Government for the purpose of the grant.

2 The petitioner was appointed as a Social Worker (Female) as per the appointment order dated 4.1.1982. The appointment was made by the Nagar Panchayat on temporary basis for a period of three months. That period came to be extended till 3.10.1982. The petitioner's services came to be terminated in the year 1983. The said order was challenged by her by filing Special Civil Application No.5695 of 1983 wherein this Court granted ad interim relief in favour of the petitioner. Ultimately, the petitioner was relegated to the alternative remedy and the petitioner filed appeal before the District Development Officer and Revision Application before the Development Commissioner. The petitioner's revision application was allowed. In the meantime the petitioner was continued in service in view of the interim protection granted by the authorities during the pendency of the appeal/revision. It appears that the petitioner's services were sought to be terminated on the ground that the services of the petitioner were not satisfactory.

However, on the second occasion the petitioner's services came to be terminated by the impugned order dated 6th May 1985 (Annexure-E to the petition) with effect from 6.6.1985 on the ground that her appointment in the year 1982 as a Field Worker was not in accordance with the revised pattern for the staff set up for family planning centre. The present petition challenges the aforesaid order of termination on the ground that the petitioner was appointed pursuant to a public advertisement and interview and therefore the petitioner's services could not have been terminated. It is further contended that the termination order was passed in mala fide exercise of power to harass the petitioner and the respondent had adopted pick-and-choose policy because the respondent was highly antagonised by the act of the petitioner's approach to this Court earlier. The termination was also challenged on the ground of violation of the principles of natural justice.

3 No affidavit-in-reply is filed on behalf of any of the respondents but, Mr V.M. Pancholi, learned AGP, for respondent no.2 - Director of Health and Medical Services who is the Principal Officer in-charge of the Family Planning Programme states that as mentioned in the termination order the petitioner's appointment was not in conformity with the staff set up approved by the Government for the purpose of grant to be paid to Panchayats for running family planning centres.

4 Mr Pancholi has also invited the Court's attention to Government Resolution dated 1.4.1976 sanctioning the revised staff pattern of the Family Planning Centres with effect from 1.4.1976 as per the instructions of the Government of India contained in the letter dated 23.2.1976. As per the said staffing pattern revised with effect from 1.4.1976 for towns having population between 10,000 to 25,000 only two posts are sanctioned viz. (1) Auxiliary Nurse and Midwife and (2) Family Planning Field Worker (Male). For Type-II villages / town having population between 25,000 to 50,000 the following four posts were sanctioned:

- (1) Family Planning Extension Educator
- (2) L.H.V.
- (3) Family Planning Field Worker (Male)
- (4) Auxiliary Nurse and Midwife

Mr Pancholi states that at the relevant time when the petitioner was appointed in January 1982 the population of Mahemdavad was only 23,852 and therefore Mehmdavad town was in Category-I and therefore only two posts were available i.e. (1) Auxiliary Nurse and Midwife and (2) Family Planning Field Worker (Male). Obviously, the petitioner was not appointed as Auxiliary Nurse and Midwife. There was no sanctioned post of Social Worker (Female) and therefore the Government did not approve of the appointment of the petitioner. In this view of the matter, Nagar Panchayat was also not entitled to receive grant for the petitioner's salary and therefore when the correct position was brought to the notice of the Panchayat, the petitioner's services came to be terminated by the impugned order dated 6th May 1985.

5 Looking to the aforesaid facts and particularly in view of the non availability of the post of Social Worker (Female) and also considering the fact that only two posts were available, namely, (1) Auxiliary Nurse and Midwife and (2) Family Planning Field Worker (Male) it is obvious that the petitioner not having been appointed on either of the above posts, the Mahemdabad Nagar Panchayat was justified in not continuing the petitioner in employment. It is true that it was the mistake of the President of the Nagar Panchayat who initially gave the appointment to the petitioner. But when the action of the President of the Nagar Panchayat was without the authority and jurisdiction, termination of the petitioner's services cannot be said to be illegal. The petition therefore deserves to be dismissed.

6 The petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

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